

Appl. No. 09/726,075
Amdt. dated September 15, 2003
Reply to Office Action of July 1, 2003

Remarks/Arguments

All claims were rejected as anticipated by U.S. Patent No. 6,479,561 to Zhou et al., or as obvious over Zhou et al. (hereinafter "Zhou"). It is submitted that Zhou is not prior art under the statute because the effective filing date of the present application is 29 November 1999, whereas the filing date of the Zhou patent is 30 August 2000, nine months later.

In accordance with MPEP §201.15, attached hereto as Appendix A is a translation of the foreign papers along with a statement that the translation of the certified copy is accurate.

For the Examiner's convenience, the following excerpt is provided from the Applicants' prior Response: The present application (i.e., 09/726,075) claims priority of prior German Application 199 57 397.2 filed in Germany on 29 November 1999. The filing date of the Zhou patent is 30 August 2000, which is nine months after the Applicants' effective filing date. Therefore, Zhou is not prior art under 102(e) and the Applicants respectfully request that it be withdrawn as a reference.

The Examiner's attention is directed to MPEP §2306.01, which states:

Although a patent which has an effective U.S. filing date later than the effective filing date of an application is not prior art against that application, the application should not be issued if the application and patent contain claims to the same patentable invention.

The issue is whether the claims in the present application are to the same patentable invention as the claims in Zhou. Claim 1 in Zhou is exemplary. It reads:

An article comprising an internal component selected from the group consisting of a resin and a foam over which at least a portion of said internal component is integrally coated with a colored polyurethane surface coating composition, wherein said polyurethane surface coating comprises at least one polymeric colorant in an amount of from about 0.1 to about 10% by weight of the entire surface coating composition, and wherein said at least one polymeric colorant exhibits an extraction level of below a change of about 0.04 absorptivity units (absorption/g/liter) upon placement of said polyurethane surface coating composition within a soap extraction solution, wherein said change in absorptivity units is measured as the comparison of the absorptivity of said soap extraction solution prior to extraction and after room temperature exposure for about four hours.

The Zhou patent does not contain claims to the same patentable invention as in the subject application, because Zhou claims an article having internal components selected from the group consisting of a resin and a foam, i.e. a resin or a foam, which is integrally coated with a colored polyurethane surface coating composition. Moreover, the claim is directed to

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the polymeric colorant and an extraction level measured in absorptivity units. In contrast, the subject application claims a molding having two internal components which are a polyurethane gel and a polyurethane foam. According to claim 2 the molding as a whole can be coated. Thus, the subject application claims a gel and a foam in a molding that can be coated; whereas Zhou claims a resin or a foam plus a colored coating. It is submitted that these are different patentable inventions.

In view of the foregoing, it is submitted that Zhou is not prior art under 102(e) and Zhou is claims a different patentable invention. Favorable reconsideration is solicited.

For the reasons stated above, Applicants believe the application is in condition for allowance and a timely Notice of Allowance is respectfully requested.

Respectfully submitted,
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